

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 1:09CR57-4
(Judge Keeley)

LANCE ERIC APPLEWHITE,

Defendant.

ORDER ADOPTING THE MAGISTRATE JUDGE'S OPINION AND
REPORT AND RECOMMENDATION [DKT. NO. 76], AND
DENYING THE DEFENDANT'S PRO SE MOTION FOR
DISMISSAL OF INDICTMENT [DKT. NO. 56]

On August 5, 2009, the defendant, Lance Applewhite ("Applewhite") filed a pro se Motion for Dismissal of Indictment, arguing that he suffered actual prejudice because his Sixth Amendment right to a speedy trial and Due Process rights were violated by the undue delay in the government's prosecution of his alleged offense (dkt. no. 56). The United States filed a response opposing the motion on August 21, 2009 (dkt. no. 71). Prior to the filing of this motion, the Court had referred all motions in the case to United States Magistrate Judge John S. Kaull on June 30, 2009 (dkt. no. 30). After Magistrate Judge Kaull considered the motion, he issued an Opinion and Report and Recommendation ("R&R") recommending that the motion for dismissal of the indictment be denied (dkt. no. 76).

The R&R also specifically warned Applewhite that his failure to object to the recommendation within ten days of receipt of the

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R&R would result in the waiver of any appellate rights on this issue. No objections have been filed.¹

The Court, therefore, **ADOPTS** the Opinion and Report and Recommendation in its entirety (dkt. no. 76), and **DENIES** Applewhite's motion for dismissal of the indictment (dkt. no. 56).

It is so **ORDERED**.

The Court directs the Clerk to transmit a copy of this Order to counsel of record, and to mail a copy to the defendant Lance Eric Applewhite, certified mail, return receipt requested.

Dated: November 17, 2009

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-53 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).